

LIFE AFTER 1915 (b)/(c) MEDICAID WAIVER

WHEN ALL ELSE FAILS WHO CAN BE THE GUARDIAN?

1. Public Guardian (35A-1270)
2. Disinterested Public Agent (35A-1213 (a), 1214 and 1202 (4))
3. Conflicts of Interest (35A-1213 (d))
 - A. No One to Assume Role in Conflict Case (35A-1213 (d))
 - B. Guardian/Termination of Parental Rights
 - C. Which County Responsible

WHAT SHOULD OUR SOCIETY PROVIDE FOR OUR MOST VULNERABLE ELDERLY AND DISABLED ADULTS?

County Social Services can solve everything?

Whether it is the State, a hospital, law enforcement, a judge, a politician, an Adult Care Home, mental health providers or a family, everyone expects that Social Services will have the solutions for adults with severe and persistent mental illness, intellectual and developmental disabilities and substance abuse who are in crisis.

Unfortunately, Social Services does not have the answers.

WHY NOT?

1. Mental Health as Guardian Prior to Change
2. Case Examples
3. Adult Care Homes (Rest Homes)
4. Social Services
5. Funding

Counties cannot continue to have unfunded mandates such as happened with the 1915 Medicaid Waiver

Federal Government is providing less funding than in the past (\$378,244 SSBG Funding Reduction)

The State is only funding around 1% of the mandated guardianship services to protect seniors and disabled adults
Counties' cost have been increasing, not counting the increased legal liability for counties



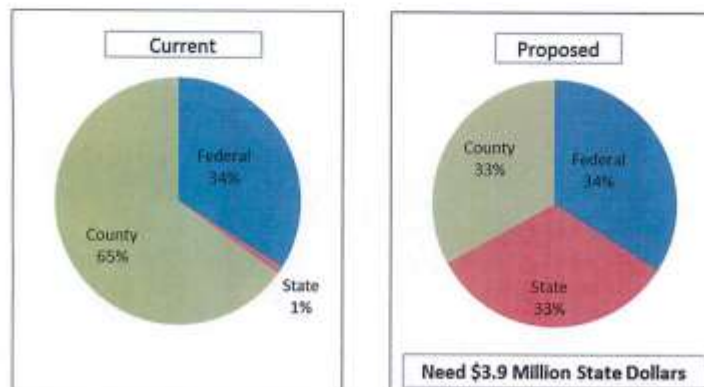
Fund Mandated Guardianship Services to Protect Seniors and Disabled Adults

Why is this important?

- Public agent guardianship services are mandated services for North Carolina's disabled citizens who have no family member to fulfill this important role.
- The 2012 General Assembly under Session Law HB950 and SB191, changed current assignment of public agent guardianship responsibility from LMEs, local Health Departments and local Departments of Social Services making the local Departments of Social Services the sole public guardian option mandated by the state of NC for future public guardianship appointments.
- We call upon the NC General Assembly to appropriate funding to support guardianship services to all incapacitated wards appointed to local Departments of Social Services at a 50% match rate with NC County Governments for the non-federally funded share of guardianship costs for both current and future public guardianships managed by local Departments of Social Services.
- We call upon the NC General Assembly to appropriate additional federal SSBG dollars to fund public guardianship services as part of fully funding mandated services first out of federal block grants.

What are we asking?

- Additional funding is required to meet the needs of this expanding population. **The North Carolina Social Services Consortium is requesting 3.9 million dollars in state or additional SSBG funding to provide this important mandated service.**



SELECTED STATUTES

Public Guardians

§ 35A-1270. Appointment; term; oath.

There may be in every county a public guardian, to be appointed by the clerk for a term of eight years. The public guardian shall take and subscribe an oath or affirmation faithfully and honestly to discharge the duties imposed upon him; the oath or affirmation so taken and subscribed shall be filed in the office of the clerk.

Disinterested Public Agent

§ 35A-1213. Qualifications of guardians.

(a) The **clerk may appoint** as guardian an adult individual, a corporation, or a **disinterested public agent**. The applicant may submit to the clerk the name or names of potential guardians, and the clerk may consider the recommendations of the next of kin or other persons.

(d) A disinterested public agent who is appointed by the clerk to serve as guardian is authorized and required to do so; provided, if at the time of the appointment or any time subsequent thereto the disinterested public agent believes that his role or the role of his agency in relation to the ward is such that his service as guardian would constitute a **conflict of interest**, or if he knows of any other reason that his service as guardian may not be in the ward's best interest, he shall bring such matter to the attention of the clerk and **seek the appointment of a different guardian**. A disinterested public agent who is appointed as guardian shall serve in that capacity by virtue of his office or employment, which shall be identified in the clerk's order and in the letters of appointment. When the disinterested public agent's office or employment terminates, his successor in office or employment, or his immediate supervisor if there is no successor, shall succeed him as guardian without further proceedings unless the clerk orders otherwise.

§ 35A-1214. Priorities for appointment.

The clerk shall consider appointing a guardian according to the following order of priority: an individual recommended under G.S. 35A-1212.1; an individual; a corporation; or a disinterested public agent. No public agent shall be appointed guardian until diligent efforts have been made to find an appropriate individual or corporation to serve as guardian, but in every instance the clerk shall base the appointment of a guardian or guardians on the best interest of the ward.

§ 35A-1202. Definitions. (4) "**Disinterested public agent**" means the director or assistant directors of a county department of social services. Except as provided in G.S. 35A-1213(f), the fact that a disinterested public agent provides financial assistance, services, or treatment to a ward does not disqualify that person from being appointed as guardian.